

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

RICHARD GOMEZ III

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CRIMINAL No. 6:08cr14-1

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On February 18, 2009, the Court conducted a hearing to consider the United States' petition to revoke the supervised release of Defendant Richard Gomez III. The United States was represented by James Noble, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk, Assistant Federal Public Defender.

Defendant originally pleaded guilty to the offense of Conspiracy to Possess with Intent to Distribute More than 100 Kilograms of Marijuana, a Class B felony. The offense carried a statutory maximum imprisonment term of forty (40) years. The United States Sentencing Guideline range, based on a total offense level of twenty-eight (28) and a criminal history category of II, was eighty-seven (87) to one-hundred and eight (108) months. On July 25, 2001 United States District Judge Hayden W. Head, Jr., for the Southern District of Texas sentenced Defendant to forty-eight (48) months imprisonment and five (5) years supervised release, based on a downward departure for providing substantial assistance and subject to the standard conditions of release, plus special conditions which included drug testing and treatment. On January 14, 2005, Defendant completed his term of imprisonment and began the five (5) year term of supervised release.

Under the terms of supervised release, Defendant was 1) prohibited from leaving the judicial district without permission of the Court or probation officer; 2) required to report to the probation

officer as directed by the Court or probation officer and submit truthful and complete written reports within the first five days of each month; and 3) required to notify the probation officer ten (10) days prior to any change of residence or employment. In its petition, the government alleges that Defendant violated these conditions by leaving the district without permission on or before April 24, 2008; by not reporting as instructed by letter to the U.S. Probation Office on April 24, 2008; and by changing his residence on or about March 31, 2008.

If the Court finds by a preponderance of the evidence that Defendant committed this violation, a statutory sentence of no more than three (3) years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). Section 7B1.1(a) of the Sentencing Guidelines indicates that if the Court finds by a preponderance of the evidence that Defendant violated conditions of supervision by leaving the district without permission on or before April 24, 2008; by not reporting as instructed by letter to the U.S. Probation Office on April 24, 2008; and by changing his residence on or about March 31, 2008, Defendant will be guilty of committing a Grade C violation, for which the Court may revoke Defendant's term of supervised release in favor of a term of imprisonment or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade C violation is four (4) to ten (10) months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to all of the violations alleged in the petition. Further, the parties agreed to recommend a sentence of six months.

Pursuant to the Sentencing Reform Act of 1984 and the agreement of the parties, the Court **RECOMMENDS** that Defendant Richard Gomez III be committed to the custody of the Bureau of

Prisons for a term of imprisonment of six (6) months with no supervised release to follow. The Court further **RECOMMENDS** that Defendant be imprisoned at the Seagoville facility.

The parties have waived their right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael H. Schneider for adoption immediately upon issuance.

So ORDERED and SIGNED this 20th day of February, 2009.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE